

Other evidence may be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided. See 86 Ill. Adm. Code 130.1405(d). (This is a GIL).

August 18, 2004

Dear Xxxxx:

This letter is in response to your letter dated March 8, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to request a written determination regarding sales tax on drop shipments that I may supply to my customers. I have read and understand Section 130.225. We have a few out-of-state customers who are not registered with the state of Illinois but drop ship to Illinois. They indicate they are reselling to their customers who can provide documentation on exemption status for Illinois. They are insistent they do not need to pay sales tax to our company in these instances even though we are registered and are required to collect sales tax unless a resale and/or exemption certificate is provided to us. There is mention in Section 130.225 of "other evidence" that may be presented to show that a customer is reselling the product but if this documentation may not be accepted by an Illinois Sales Tax Auditor then it really does us no good. I would like something in writing from you that we may present either to our customer or our auditor that clearly states the customer is or is not responsible for sales tax on drop shipments to customers who are exempt from Illinois sales tax.

Thank you in advance for your immediate attention to this matter.

DEPARTMENT'S RESPONSE:

As noted in Section 130.225 of the Department's administrative rules regarding drop-shipments, a drop-shipment situation is usually one in which out-of-State purchasers ("Purchasers")

make purchases for resale from companies ("Companies") which are registered with Illinois and have those Companies drop-ship the property to Purchasers' customers ("Customers") located in Illinois. See 86 Ill. Adm. Code 130.225. As a seller required to collect Illinois tax, Companies must either charge tax or document exemptions when they make deliveries in Illinois. In order to document the fact that their sales to Purchasers are sales for resale, Companies are obligated by Illinois to obtain valid Certificates of Resale from Purchasers. See 86 Ill. Adm. Code 130.1405.

Active registration or resale numbers on Certificates of Resale are still the preferred method of documenting the transaction. However, the Illinois Retailers' Occupation Tax Act provides as follows:

"Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale." See 35 ILCS 120/2c.

Again, including registration or resale numbers from Purchasers on Certificates of Resale is the preferred method for documenting that the purchases from Companies are purchases for resale. However, in light of this statutory language, certifications from Purchasers on Certificates of Resale in lieu of resale numbers which described the drop-shipment situation and the fact that Purchasers have no contact with Illinois which would require them to be registered and that they choose not to obtain Illinois resale numbers would constitute evidence that the particular sale is a sale for resale despite the fact that no registration number or resale number is provided. The risk run by Companies in accepting such a certification and the risk run by Purchasers in providing such a certification is that an Illinois auditor is much more likely to go behind a Certificate of Resale which does not contain a valid resale number and require that more information be provided by Companies as evidence that the particular sale was, in fact, a sale for resale.

Please note that the exempt status of your purchasers' customers is not relevant in regards to your company's sales to those purchasers. In drop-shipment situations, your company must either charge tax or document the resale exemption to those purchasers for taxable merchandise delivered to locations in Illinois.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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